IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No. 646 of 2000

Judgment reserved on 3.11.2006

Date of decision 15.11.2006

Justice R.K. Mahajan (Retd.) **…Petitioner.**

Versus

State of H.P. and others **…Respondents.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: **Mr. D.D. Sood, Sr. Advocate, with Mr. Aman Sethi, Advocate.**

For respondents : **Mr.C.B. Singh, Dy. Advocate General, for respondents No. 1 to 3.**
Mr. K.D. Sood, Advocate, for respondent No.5
Mr. Rajiv Sharma, Sr. Advocate, with Mr. Surinder Sharma, Advocate, for respondent No. 6.
Mr. R.K. Gautam, Sr. Advocate, with Ms. Archana Dutt, Advocate, for respondent No. 8.
Mr. Kuldeep Singh, Sr. Advocate, with Mr. Karan Singh, Advocate, for respondent No. 9.

Surjit Singh, Judge

The petitioner, who retired as a Judge of the High Court, was appointed Chairman of H.P. State Commission for Backward Classes, vide notification dated 2.12.1998 (Annexure-PA) for a period of one year and on expiry of that period of one year, his

---

Whether reporters of Local Papers may be allowed to see the Judgment?

tenure was extended till further orders, vide notification dated 1.12.1999 (Annexure-PB). The appointment was made under clause 3 of the H.P. State Commission for Backward Classes Order, 1993 (Annexure-PC). Sub-clause (5) of clause 4 of the Order provides that the salaries and allowances, payable to, and the other terms and conditions of service of the Chairperson and Members shall be such as may be determined by the State Government from time to time. The Government then framed rules called 'H.P. State Commission for Backward Classes (Salary, Allowances and other Terms and Conditions of Service of Members) Rules, 1995' and notified them, vide notification dated 19.8.1995 (Annexure-PD). Rule 3 of the said Rules, inter alia, provides that where the Chairperson is the retired Judge of High Court, he shall get the salary, which he was last drawing minus the pension, if any, being drawn by him and all other perks, which he earlier have enjoyed as sitting Judge / Chief Justice of the High Court, as the case may be.

2. It appears that after his appointment, the petitioner started drawing salary and other allowances and perks and availing the facilities to which a sitting Judge of a High Court is entitled. When amendment to the 'High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 1998 came into force, the petitioner started drawing House Rent Allowance at the increased rate of Rs.10,000/-, which was Rs.2,500/- per month prior to such increase. He also availed Leave Travel Concession and claimed Rs.42,838/- on account of the traveling charges. Audit of the accounts of the H.P. Commission for Backward Classes,

Shimla was conducted by the Auditors of the Accountant General and several objections were raised. Two of these objections pertained to the drawl of the House Rent Allowance by the petitioner at the rate of Rs.10,000/- per month from 8.1.1999 from which date the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 1998 came into force and the other to the drawl of Leave Travel Concession claim of Rs.42838/-. The Auditors noted in the objections that the amount drawn by the petitioner on account of House Rent Allowance at a rate in excess of Rs.2,500/- was liable to be recovered. The amount was worked out at Rs.80,806/-. Similarly, the Auditors pointed out that the amount of Leave Travel Concession claim, i.e. Rs.42,838/-, was also required to be recovered from the petitioner. Though initially the Government in its reply to the audit objections, prepared in annotated form (Annexure-PK), took the stand that after the amendment of the High Court and Supreme Court Judges (Salaries and Conditions of Service) Act, 1998, the petitioner was entitled to draw House Rent Allowance at the rate of Rs.10,000/- and was also entitled to Leave Travel Concession in the same way as the sitting Judges of the High Court, yet later on it amended the H.P. State Commission for Backward Classes (Salary, Allowances and other Terms and Conditions of Service of Members) Rules, 1995, vide notification dated 10.8.2000 (Annexure-PR), whereby the amount of House Rent Allowance was brought down to the amount equivalent to the amount admissible to Members of All India Service and the Leave Travel Concession for self and family was restricted to the

same as admissible to the re-employed pensioners as per Leave Travel Concession Rules. Amendments were also made with respect to other items of facilities and perquisites, which are not relevant for deciding this writ petition and so they are not being noticed herein.

3. Even before the amendment of the rules, a clarificatory letter was written by the Government (respondent No. 3) to the writ petitioner that in the High Court Judges (Condition of Service) Act, 1954 there was no provision regarding the facility of availing Leave Travel Concession and so he was not entitled to such a concession. The letter is Annexure-PG and it is dated 5.1.2000. The writ petitioner, feeling aggrieved by the aforesaid audit objections and the threatened recovery, pursuant to the aforesaid objections and also the issuance of letter dated 5.1.2000 (Annexure-PG) as also the notification dated 10.8.2000 (Annexure-PR) thereby amending the H.P. State Commission for Backward Classes (Salary, Allowances and other Terms and Conditions of Service of Members) Rules, 1995, filed the present writ petition seeking the issuance of the following writ / directions:-

(a) Quash Annexure-PG to the extent it holds that the petitioner is not entitled for LTC.

(b) Quash para-1 of Section (B) under the head “Other Irregularities” regarding overpayment of HRA of Rs.0.81 lakhs of the Audit Report Annexure-PK whereby recovery of Rs.80,806/- has been sought to be recovered from the petitioner.

(c) Quash para-2 of Section (B) under the heading “Other Irregularities” regarding unauthorised payment of LTC of Rs.42,838/- of Annexure-PK, of the audit report for the period July, 1998 to November, 1999, on the basis of which recovery has been sought to be recovered from the petitioner.

(d) Quash the letter dated 26.4.2000 Annexure-PM, issued by the respondent No. 2 in not granting revision of HRA and give direction to grant the HRA at the revised rates in view of the letter issued by the Ministry of Law, Justice & Company Affairs dated 29.1.1999, which was issued on the basis of amendment carried out vide Act No. 7 of 1999 in High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 1998 which came into force on 8.1.1999 and to release the amount of perks of LTC, HRA up to date.

(e) To issue an order to grant Leave Encashment for the leave earned by the petitioner during his tenure.

(f) To issue a writ in the nature of mandamus directing the respondents No. 1 to 3 to perform their duties by granting all the perks available to the petitioner, i.e. LTC, HRA. etc. at enhanced rates due to him be released in view of the Central Government notification and amendment in the High Court and Supreme Court Judges (Salaries and Conditions of Services) Act, 1998 and rules framed there under from time to time.

(g) Issue direction by granting a compensation of not availing LTC by issuing a letter dated 5-1-2000 and audit report objection to the tune of Rs.2,00,000/- along with interest @ 18% per

annum or any other reasonable amount, which may be considered appropriate.

(h) Quash the notification dated 10-8-2000 (PR) so far it affects the rights, perks and other facilities available to a High Court Judge by virtue of the original terms and conditions retrospectively as mentioned in Annexure-PD to the writ petition.

(i) Quash the notification dated 10-8-2000 (PR) granting to the Members Rs.250/- as daily allowance equivalent to honorarium and telephone facilities to Members retrospectively i.e. from the date of issuance of Annexure-PD.

(j) To issue an appropriate writ and order prohibiting the respondents No. 1 to 5 to affect recovery in view of the clarification notification Annexure-PR and pay dues i.e. medical bills and of other perks as per Annexure-PD and High Court Judges (Conditions) of Services Act, 1954 and rules framed there under along with interest.

(k) Quash the letter Annexure-PS dated 31-8-2000.

(l) To quash the letter dated 27-9-2000 (PU).

(m) Allow the special cost of the writ petition.

(n) Direct the respondents to produce relevant records for the perusal of the Court.

4. The writ petitioner then amended his petition and impleaded respondents No. 6 to 10. Chairman of the H.P. State Commission for Backward Classes was impleaded as respondent No. 10, because by then the writ petitioner had retired. So far as respondents No. 6 to 9 are concerned, some personal allegations were made against them. It was alleged that after the filing of the

writ petition, they connived with each other and got issued letter Annexure-PM, dated 26.4.2000, whereby request of the petitioner for grant of House Rent Allowance at the rate of Rs.10,000/- was turned down, letter dated 31.8.2000 (Annexure-PS), whereby the bills for reimbursement of medical claims were returned with the observation that the reimbursement be sought from the High Court of Allahabad from where the writ petitioner retired and letter dated 27.9.2000 (Annexure-PU), whereby another set of bills of medical reimbursement was returned with the same observation.

5. A common reply has been filed by respondents No. 1 to 3, wherein, besides controverting the case on merits, certain preliminary objections have been raised. It is alleged that the petitioner, being the holder of a civil post under the Government, ought to have approached the State Administrative Tribunal, instead of filing the writ petition in this Court. It is also alleged that a Chairman of the Commission cannot be equated with a sitting Judge and that is why the rules have been clarified vide amendment of 2000. Regarding audit objections, it is stated that the same have been raised by the Accountant General in exercise of his statutory function and the matter can be dealt with finally by the PAC of the House only. Other preliminary objections pertain to the addition of respondents No. 6,7, 8 and 9 and the personal allegations made against them in the amended writ petition. The same may not be noticed here, because during the course of the final hearing of the matter, learned counsel representing the writ petitioner stated that

he had the instructions not to press the allegations made against the said respondents.

6. On merits it is alleged that the State Government had the authority to change the rules. It is alleged that in fact the amendments carried out in the rules vide notification dated 10.8.2000 (Annexure-PR) are only clarificatory in nature and that they do not bring about any material change in the original Rules of 1995, but only clarify certain things, which had scope for ambiguity.

7. When the matter was taken up for hearing, Shri D.D. Sood, Senior Advocate, appearing for the petitioner, stated that the petitioner did not want to press personal allegations made against respondents No. 6, 7, 8 and 9 and that he was interested only in quashing and setting aside of the audit report, wherein it is stated that there has been over-drawl of House Rent Allowance and drawl of Leave Travel Concession claim contrary to the rules and the recovery needs to be effected from the petitioner and the letters Annexures PG, PM, PS, PU and notification dated 10.8.2000 (Annexure-PR) to the extent these letters and notification affect his right to avail Leave Travel Concession, to claim House Rent Allowance, to seek reimbursement of medical expenses and to claim leave encashment on part with the sitting Judges of the High Court.

8. I have heard the learned counsel for the parties and gone through the record.

9. The writ petitioner was appointed as Chairperson under the provisions of the H.P. State Commission for Backward Classes Order, 1993. Sub-clause (5) of clause 4 of the said Order says that

the salaries and allowances payable to and the other terms and conditions of service of the Chairperson and the Members shall be such as may be determined by the State Government from time to time. A bare reading of this provision of the Order makes it plainly clear that the State Government may revise the salaries and allowances and other terms and conditions of the service of the Chairperson and the Members of the Commission from time to time. If that is so, the writ petitioner cannot be heard to say that when he had been appointed, the H.P. State Commission for Backward Classes (Salary, Allowances and other Terms and Conditions of Service of Members) Rules, 1995 provided for the payment of salary and all other perks as payable to a sitting Judge, to the Chairperson if he happened to be a retired Judge and that such rules could not have been changed / amended to his disadvantage. He was supposed to be knowing that his appointment was under the H.P. State Commission for Backward Classes Order, 1993 and that sub-clause (5) of clause 4 of the said Order reserves the power with the State Government to change the salary and allowances payable to the Chairperson and other terms and conditions of service from time to time. So the contention that the amendment carried out to the H.P. State Commission for Backward Classes (Salary, Allowances and other Terms and Conditions of service of Members) Rules, 1995, vide notification dated 10.8.2000 (Annexure-PR) are illegal or void or cannot change the scale of salary and allowances and perks and other service conditions of the writ petitioner, on account of this notification having been issued subsequent to his appointment as

Chairperson, cannot be accepted. Therefore, after the issuance of the notification dated 10.8.2000 (Annexure PR), amending the H.P. State Commission for Backward Classes (Salary, Allowances and other Terms and Conditions of Service of Members) Rules, 1995, the writ petitioner cannot claim anything on account of salary, allowances of perquisites in excess of the scales fixed vide clauses (i) to (ix) of Rule 3 of the notification dated 10.8.2000 (Annexure-PR).

10. It was urged on behalf of the petitioner that he being Judge, even though retired, his allowances and other perquisites could not be reduced. The argument has been noticed only to be rejected. The allowances and other rights in respect of leave of absence or pension cannot be varied to the disadvantage of a sitting Judge, in view of the proviso to clause (2) of Article 221 of the Constitution of India. This proviso has no application where a Judge after retirement is appointed to some other post, the terms and conditions of which are governed not by the Constitution or the High Court Judges (Salaries & Conditions of Service) Act, 1954 or the Rules framed thereunder.

11. However, prior to the amendment of the H.P. State Commission for Backward Classes (Salary, Allowances and other Terms and Conditions of Service of Members) Rules, 1995, vide notification dated 10.8.2000 (Annexure-PR), the writ petitioner was entitled to all those perquisites, which he earlier had enjoyed as sitting Judge, in view of the provision of Rule 3 of the H.P. State Commission for Backward Classes (Salary, Allowances & other

Terms and Conditions of Service of Members) Rules, 1995. The unamended Rule quite unambiguously stated that a retired Judge, if appointed as Chairperson, would be entitled to all other perks, which he earlier have enjoyed as sitting Judge.

12. As the sitting Judge the petitioner was entitled to use of an official residence without payment of rent in accordance with such rules as may from time to time be made in this behalf and if he did not avail himself of the use of an official residence, he was entitled to be paid every month an allowance, which was earlier Rs.2,500/- and later on was raised to Rs.10,000/- by Amendment Act of 1999 effective from 8.1.1999, per Section 22A of the High Court Judges (Salaries & Conditions of Service) Act, 1954. A bare reading of Section 22A of the High Court Judges (Salaries & Conditions of Service) Act, 1954 makes it clear that a sitting Judge is entitled to rent free accommodation and if he does not avail of this facility, he is entitled to a fixed amount of money, which was earlier Rs.2,500/- and after amendment effective from 8.1.1999 it stood raised to Rs.10,000/-. This amount being payable not on account of House Rent Allowance as such but in lieu of the Judge not availing himself of the use of an official residence, the petitioner too was entitled to the aforesaid increase until the amendment of H.P. State Commission for Backward Classes (Salary, Allowances and other Terms and Conditions of Service of Members) Rules, 1995, vide notification dated 10.8.2000.

13. Similarly, the petitioner, while serving as a sitting Judge, and his family members were entitled to two leave travel

concessions a year, per Rule 7-A of the High Court Judges Travelling Allowance Rules, 1956. He availed one leave travel concession between 27.1.1999 and 16.2.1999 and withdrew a sum of Rs. 42838/- on account of L.T.C. claim. There was nothing wrong about the availment of the Leave Travel Concession and the drawl of the claim. The Auditors objected to this claim with the reasoning that the H.P. Leave Travel Concession Rules (Clarification under Rule 3 Section II) did not permit the availing of Leave Travel Concession by a re-employed Officer unless he had completed one year continuous service. The writ petitioner was not subject to the aforesaid H.P. Leave Travel Concession Rules (Clarification under Rule 3 Section II) nor was he a re-employed Officer. He is a retired Judge and had been appointed as Chairperson of the H.P. State Commission for Backward Classes Order, 1993 and his salary and perks were governed by the H.P. State Commission for Backward Classes (Salary, Allowances and other Terms and Conditions of Service of Members) Rules, 1995.

14. The writ petitioner has also claimed the payment of cash equivalent to the salary for the leave, which he earned while working as Chairman of the Commission. It is true that a Judge of the High Court, per Section 4-A of the High Court Judges (Salaries & Conditions of Service) Act, 1954, is entitled to encashment of his accumulated leave on his retirement, but it is only to the extent of maximum period prescribed for encashment of earned leave under the All India Service (Leave) Rules, 1955. The limit is 300 days. The writ petitioner has not disclosed that when he retired as Judge,

the period of leave, for which encashment was availed, was less than the maximum limit. If a Judge encashes the leave to the extent of maximum period prescribed under the All India Service (Leave) Rules, 1955 on his retirement, he should not be entitled to encashment of leave earned by him while holding an office post retirement, because that would be contrary to the provision of Section 4-A of the High Court Judges (Salaries and Conditions of Service) Act, 1954.

15. As a sitting Judge the petitioner was also entitled to reimbursement of expenses incurred by him for his own treatment and the treatment of his spouse and other dependent family members. The writ petitioner, as per Rule 3 of the H.P. State Commission for Backward Classes (Salary, Allowances and other Terms and Conditions of Service of Members) Rules, 1995, prior to their amendment, vide notification dated 10.8.2000 (Annexure PR), was entitled to all those perquisites, which he had been enjoying as a sitting Judge. The respondents were, therefore, not justified in not clearing his medical reimbursement bills and returning the same with the observation that he should seek reimbursement as a pensioner Judge from the concerned High Court.

16. As a result of the above discussion, the writ petition is partly allowed and the following writs / directions / orders are issued:-

(a) Letter dated 5.1.2000 (Annexure-PG), which says that the writ petitioner was not entitled to Leave Travel Concession; letter dated 26.4.2000 (Annexure-PM), which says that the petitioner was

not entitled to House Rent Allowance at the rate revised vide High Court and Supreme Court Judges (Salaries & Conditions of Service) Amendment Act, 1998, which came into force on 8.1.1999; letters dated 31.8.2000 (Annexure-PS) and 27.9.2000 (Annexure-PU), whereby medical reimbursement bills for the period prior to 10.8.2000 had been returned, are quashed.

(b) Audit report (Annexure-PK), to the extent it says that a sum of Rs.80,806/-, on account of H.R.A. and a sum of Rs.42,838/- on account of L.T.C. claim, are required to be recovered from the writ petitioner, is also quashed and set aside.

(c) Respondents No. 1 to 3 are directed to reimburse the medical expenses, the claims for which were returned to the writ petitioner, vide letters dated 31.8.2000 (Annexure-PS) and 27.9.2000 (Annexure-PU), within one month.

(d) Respondents No. 1 to 3 are further directed to pay allowance to the petitioner at the rate of Rs.10,000/- per month, on account of his not availing himself the use of an official residence from 8.1.1999 to 10.8.2000, within one month. While working out the amount payable in terms of this direction, the period for which the writ petitioner has already claimed this allowance at the rate of Rs.10,000/- per month, shall be excluded.

17. The writ petition stands disposed of accordingly.

November 15, 2006 (BC) **(Surjit Singh)**
Judge